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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

THE CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA and THE PEOPLE OF THE STATE OF CALIFORNIA,)	Case No. 3:18-cv-07591-CRB
Acting by and through San Francisco City Attorney DENNIS J. HERRERA,)	JOINT STATUS UPDATE
)	Judges: Hon. Charles R. Breyer and Jacqueline Scott Corley
Plaintiffs,)	
vs.)	Courtroom: Via Videoconference
PURDUE PHARMA L.P., et al.,)	Hearing Date: June 16, 2021
Defendants.)	Hearing Time: 8:30 a.m.

The parties respectfully submit this Joint Status Update in advance of the Court's discovery conference scheduled for June 16, 2021 at 8:30 a.m.

I. JOINT STATEMENT REGARDING SCHEDULE AND DISPUTE RESOLUTION

The parties jointly report on a number of case developments that have taken place since the last conference with the Court.

A. Schedule Extension

On June 7, the Court entered the parties' joint stipulation and proposed order to modify the case schedule.¹ Doc. 568. The specific dates are reflected in the chart below:

Event	Current Schedule
Custodial Productions Substantial Completion Deadline	June 4, 2021
Document Production Substantial Completion Deadline	June 21, 2021
Plaintiff's Expert Reports	October 5, 2021
Close of Fact Discovery	November 12, 2021
Defendants' Expert Reports	December 2, 2021
Plaintiff's Expert Rebuttal Reports	December 23, 2021
Close of Expert Discovery	January 14, 2022
Motions for Summary Judgment and <i>Daubert</i> Motions	January 24, 2022
Oppositions to Motions for Summary Judgment and <i>Daubert</i> Motions	February 25, 2022
Replies in Support of Motions for Summary Judgment and <i>Daubert</i> Motions	March 11, 2022
All Trial Materials Due	March 24, 2022
Final Pretrial Conference	April 4, 2022
Trial	April 25, 2022

¹ The Court entered the Declaration of Thomas E. Egler Accompanying Stipulation as the new Scheduling Order, not the parties' stipulation and proposed order. *See* Docs. 567-68. Defendants respectfully request that the Court enter the parties' stipulation and proposed order as the new Scheduling Order.

B. Update on Status of Settlement Among Stipulating Parties (Docs. 518-19, 562, 564, 570)

On January 26, 2021, the Court stayed the proceedings as to the Stipulating Defendants.² The Stipulating Parties submitted a status update on March 29, 2021 (Doc. 518), and on March 31, 2021, Judge Breyer ordered the parties to submit a second update within 45 days (Doc. 519). On May 17, 2021, the Stipulating Parties submitted a Joint Notice Regarding Update on Status of Settlement (Doc. 562). The Court ordered the Stipulating Parties to submit to the Court an update on the status of the proposed settlement on June 11, 2021. Doc. 564. On June 11, the Stipulating Parties filed a Third Joint Notice Regarding Update on Status of Settlement, suggesting they provide a further update to the Court again on August 9. Doc. 570. There, the Stipulating Parties reported that they continue to make substantial progress in the negotiations. Once the documentation is completed, there will be a sign-on process for states and political subdivisions that, due to the number of parties involved, will likely take several months.

C. Discovery Orders Issued Since Prior Conference (Docs. 561, 563)

Following the last status conference, the Court issued two discovery orders. In the first, the Court set deadlines regarding certain of Endo's newly agreed upon custodial productions and supplemental interrogatory responses, and otherwise denied Plaintiff's motion to compel. Doc. 561. In the second, the Court ordered Walgreens and Plaintiff to meet and confer regarding Walgreens' prescription and due diligence records. Doc. 563.

D. Discovery Motions

The parties have briefed one dispute pursuant to the revised resolution protocol outlined in Discovery Order No. 2 (Doc. 382). That dispute is outlined in the chart below.

Moving Party	Responding Party	Dispute	Doc.
Plaintiff	Walgreens	Remaining issues re: Walgreens' Due Diligence Notes	569

² The Stipulating Defendants are distributors McKesson Corporation, AmerisourceBergen Drug Corporation and Cardinal Health, Inc.; and manufacturer Johnson & Johnson, its subsidiary Janssen Pharmaceuticals Inc. f/k/a Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. and its former affiliate Noramco, Inc. (with Plaintiff, the "Stipulating Parties").

II. PLAINTIFF’S STATEMENT

A. Case Schedule & Plaintiff Productions

Defendants’ accusations of any malfeasance by Plaintiff are unfounded. The Court entered the modified schedule proposed by the parties, and the parties’ stipulation speaks for itself. *See* Docs. 567-68. Contrary to Defendants’ representation, Plaintiff did not intentionally withhold information regarding the status of its production.

And consistent with the representations made in Plaintiff’s declaration accompanying the parties’ stipulation, Plaintiff completed the substantial production of its custodial documents on June 4, 2021. *See* Doc. 567. The only custodial documents that Plaintiff is aware of that remain for it to produce are: (1) privilege and redaction review documents (*i.e.*, documents set aside for privilege that could be produced after further review); and (2) documents that require a secondary review because of a coding issue or technical issue identified during the initial review. To date, Plaintiff has produced more than 500,000 individual documents, consisting of more than three million pages of information.

B. Defendants’ Discovery Deficiencies

As the deadline for the substantial completion of documents approaches on June 21, 2021, Plaintiff raises certain discovery issues below, which primarily stem from issues on which this Court has previously issued discovery orders.

1. Endo/Par

a. Missing Data Issues

On May 14, 2021, this Court ordered Endo to supplement its responses to Interrogatory Nos. 1-4 with missing data it is able to locate by May 31, 2021. Doc. 561. While Endo provided some supplemental responses by that date, as noted below, Endo is still searching for missing data responsive to these interrogatories. As a result, Plaintiff anticipates that further supplemental responses will be necessary after Endo’s data investigation is complete.

On June 11, 2021, Endo informed Plaintiff that, within the last week, it had located previously missing dropdown fields from the call logs Plaintiff identified and requested, including “Message Description” and “Message Name” data from 2013 and 2014. Endo further advised that

1 its investigation is ongoing. When asked during a Zoom conversation why this data was not
2 previously produced, counsel for Endo stated that they only recently “found” a “database file” in
3 “another location” other than its Commercial Data Warehouse. As Plaintiff understands it, this
4 database file was from an IT source and was part of a workflow regarding the migration of data to
5 the Commercial Data Warehouse. Endo declined to provide any additional information regarding
6 this “database file” or why it was not produced previously. Endo also stated that it has now found
7 additional date ranges not previously produced and, while it hopes to produce all missing messaging
8 call data in the next week or two, it was unwilling to commit to a production date.

9 Endo also has yet to locate *any* of the missing date ranges from the Materials Dropped File
10 that Plaintiff identified and requested. Moreover, Endo informed Plaintiff on June 11, 2021, that it
11 would not be able complete its investigation or production by June 21, 2021, and that it had *no*
12 *estimate* of how long the investigation into the missing data would take.

13 Further, during a follow up conference on June 14, 2021, Endo advised Plaintiff that it has
14 now identified *further* previously unproduced call log data from 2002 to 2007. This data was
15 apparently found in a production volume in an unrelated case. No explanation was offered for why
16 the data was not identified and produced here.

17 While Plaintiff is pleased the investigation is proving fruitful, it is an investigation that
18 should have been undertaken and completed months, if not years, ago. Thus, Plaintiff believes a
19 deadline for completion should be ordered.

20 In light of ongoing revelations of responsive documents and data that were not identified for
21 production and/or have yet to be produced, Plaintiff has also asked Endo to provide: (a) information
22 regarding the all Customer Relationship Management systems used (Plaintiff has identified from the
23 documents at least three); (b) information regarding where and how Reports or Suspected Diversion
24 were maintained; (c) information regarding all databases used by Endo’s Medical Science Liaisons;
25 and (d) information identifying documents produced in response to Plaintiff’s Requests for
26 Production in this case that were produced in the MDL without San Francisco Bates stamps.
27 Plaintiff asked for a response to these inquiries by June 2, 2021, but Endo has not yet responded.

1 While on June 14, 2021, Endo represented it would be sending a letter replying to Plaintiff's
2 inquiries soon, it refused to say whether it planned to provide any of the information requested.

3 **b. Productions Ordered by the Court**

4 Plaintiff anticipates receiving additional custodial file productions and documents located by
5 running terms designed to locate Reports of Suspected Diversion from Sales Representative files by
6 June 21, 2021, the date by which this Court ordered those productions must be substantially
7 complete.

8 **c. Outstanding Issues on Which the Parties Continue to
Meet and Confer**

9 In addition, Plaintiff is continuing to meet and confer with Endo regarding outstanding
10 issues, including the following: 1) application of search terms aimed at locating Reports of
11 Suspected Diversion in the files of District Managers and Regional Directors; 2) Plaintiff's request
12 that Endo affirmatively state when its custodial and non-custodial productions are complete and
13 whether documents are being withheld on any grounds; and 3) deficiencies in the Endo Defendants'
14 Responses to Plaintiff's First Set of Interrogatories to All Non-Severed Defendants.

15 **2. Walgreens**

16 Plaintiff is investigating whether Walgreens' productions for regional custodians are
17 complete. Doc. 530 at 2 (setting May 3 production deadline). For several of these custodians,
18 Walgreens' productions contain few, if any, documents pre-dating this litigation or from the period
19 of time in which these custodians actually worked in San Francisco. Plaintiff has written several
20 letters, and continues to meet and confer with Walgreens.

21 Plaintiff also continues to meet and confer with Walgreens about a number of interrogatory
22 responses seeking basic facts.

23 Defendants' discussion below about Plaintiff's methadone-related production is misleading.
24 Plaintiff produced all responsive outpatient pharmacy dispensing data several months ago. The
25 parties are now meeting and conferring about production of additional data relating to treatment of
26 opioid use disorder ("OUD") with buprenorphine from both Plaintiff's and Walgreens' pharmacies.
27 With respect to methadone for OUD treatment, which only an opiate treatment program (not a
28

1 pharmacy) can provide, Plaintiff has not “withheld” anything and has offered Defendants extensive,
 2 granular data that should satisfy any legitimate interests.³

3 **3. Allergan**

4 As Plaintiff noted in the May 5 joint status update (Doc. 550), Allergan has several deficient
 5 interrogatory responses, the answers to which will affect Plaintiff’s expert analysis. Allergan has
 6 agreed to provide the additional information no later than June 28, 2021.

7 On May 13, 2021 Plaintiff noticed the deposition of Allergan witness, Tracey Norton.
 8 Allergan has yet to respond on whether it will accept service for Ms. Norton or provide dates for her
 9 deposition.

10 Finally, since the last status conference, Plaintiff has also served subpoenas on 12 different
 11 nonparties upon learning the identities of various advertising and marketing agencies that Allergan
 12 identified in its interrogatory responses. Plaintiff has started to receive objections and responses
 13 from the nonparties and is meeting and conferring with regard to the scope of the subpoenas.

14 **4. Teva**

15 Plaintiff has identified a number of deficiencies in Teva’s interrogatory responses. Plaintiff
 16 will endeavor to meet and confer with Teva on these and related issues.

17 **C. Defendants’ Improper Discovery on the San Francisco Sheriff’s** 18 **Department and Other Cities and Counties that Have Brought** **Actions Against Defendants in the MDL**

19 Defendants’ non-party discovery efforts in the case have been extensive. To date, the various
 20 defendants have served approximately 70 subpoenas, comprising of almost 1000 discrete document
 21 requests.

22 Walgreens served the latest batch of these subpoenas on June 10. The subpoenaed entities
 23 include 20 Bay Area pharmacies and law enforcement agencies, including the sheriff departments
 24 for Alameda, Contra Costa, Sonoma, Marin, Santa Clara, Solano, and Napa Counties. Plaintiff is
 25 still reviewing these recently served subpoenas, but a few issues jump out. *First*, they are broad.

26
 27 ³ Defendants’ discussion of the history of deposition scheduling is also misleading and
 28 incomplete, but the relevant upshot is that the only two depositions any Defendant has noticed are on
 the calendar.

For example, as to each law enforcement entity, the subpoenas seek, among other things, “[a]ll Communications relating to Prescription Opioids, Illicit Opioids, or other Illicit Drugs.” This includes all communications about and documents related to the “misuse” and “abuse” of “any Schedule I drug,” a definition that explicitly includes drugs like marijuana, which have no possible relevance to this case. *Second*, most of the governmental entities that Walgreens subpoenaed have filed actions in the MDL and are (from Plaintiff’s understanding) subject to Judge Polster’s discovery stay for non-bellwether actions in the MDL. *See* Case Management Order One, *In re Nat’l Prescription Opiate Litig.*, No. 1:17-md-02804-DAP (N.D. Ohio) Doc. 232 at 1, 12. *Third*, confusingly, Walgreens even subpoenaed the San Francisco Sheriff’s Department, which is a custodial Plaintiff department that is subject to and has already responded to *party* discovery in this case (Walgreens formally withdrew this subpoena on June 14, 2021).

III. DEFENDANTS’ STATEMENT

A. Status of Party Discovery

1. Case Schedule

The *parties* agreed to seek a four-month schedule extension after Plaintiff represented to Defendants and the Court that Plaintiff’s experts had health issues and scheduled conflicts. Defendants agreed to seek a four-month extension based on Plaintiff’s prior representations to the Court that its custodial productions had long been substantially complete and would be entirely produced by May 14. *See* 4/14/2021 Status Conference Tr. at 50:18-19 (“Get them produced by May 14. ... We will do it, Your honor.”). Only after securing that agreement, and the Court’s blessing, did Plaintiff reveal that far from completing custodial productions by the Court’s deadline, Plaintiff would not be substantially complete until June 4.⁴ Based on this changed set of circumstances, Defendants sought an extension of the schedule and Plaintiff acceded to it, extending the deadlines by an additional three weeks.

⁴ Defendants do not suggest Plaintiff intentionally withheld information regarding the status of its production.

2. Defendants' Discovery Requests

In advance of the Court's February 26, 2021 deadline for substantial completion of document productions, Plaintiff identified 30 custodial email productions as substantially complete. On April 12, 2021, Plaintiff represented it had substantially completed email production of eight additional custodians. On April 16, Plaintiff notified Defendants that its email production for one additional custodian was substantially complete. On May 18, Plaintiff informed Defendants that around one quarter of its custodial files had not been completely produced, as set forth above. On June 4, Plaintiff produced an additional *52,123 documents totaling 694,201 pages*, from 40 individual custodians and 18 non-custodial sources. Defendants are currently evaluating that production, which will take time, as it represents over nine percent of plaintiff's overall production.

Following the Court's April 15, 2021, Order for Plaintiff to produce Crime Data Warehouse ("CDW") narratives (Doc. 530), the parties met-and-conferred, and Plaintiff agreed to produce 10 additional categories of CDW narratives as well as associated documents stored in the CDW. After Plaintiff made its initial productions, Defendants followed up regarding twenty-one incidents for which the CDW narratives were incomplete or inappropriately redacted. Plaintiff largely agreed to produce or re-produce these narratives and completed this production last week. Defendants are reviewing the CDW production and will follow up regarding production of any additional CDW-related documents or information.

Defendants are also evaluating the sufficiency of Plaintiff's other productions. Examples of what appear to be deficiencies, which Defendants have identified for Plaintiff, include the following categories of documents or data that Plaintiff appears not to have produced in full: Plaintiff's methadone data—Defendants understand Plaintiff did not produce data related to methadone administered for "treatment," rather than pain, despite having agreed to produce dispensing data for methadone; and Plaintiff's other opioid treatment drug data and related abatement costs. The parties are meeting and conferring and hope to resolve the issues without this Court's intervention. Defendants will raise any additional disputes with the Court as necessary.

On April 7, Defendants made their first requests for deposition dates of two of Plaintiff's witnesses. Plaintiff responded on April 20 that the two witnesses were available on May 14 and May

17. The parties confirmed these deposition dates. On May 11, Plaintiff unilaterally pulled down these depositions. On May 21, Plaintiff confirmed these two witness' custodial files would be completed that day, but could not confirm their documents would be completely produced before June 4. Defendants asked for deposition dates in the second half of June. On June 3, Plaintiff offered June 29 and July 12 for these depositions. Defendants accepted these dates.

3. Plaintiff's Discovery Requests

Defendants have produced millions of documents in the MDL, which are deemed produced in this case. In addition, Defendants have made additional productions specific to this case.

In advance of the last status conference, **Walgreens** completed its custodial productions, resulting in a production of approximately 50,000 custodial documents, on top of the more than 380,000 documents Walgreens has produced in the MDL. On May 17, Walgreens completed its production of hard copy refusals to fill and Target Drug Good Faith Dispensing checklists resulting in a total hard copy production of over 35,000 documents and over 135,000 pages.⁵

The **Endo** and **Par** Defendants substantially completed their production by the original substantial completion deadline of February 26, 2021 for the custodians and data stores identified to Plaintiff, utilizing the searches disclosed, as of that original deadline. The Endo and Par Defendants have since made substantial progress toward producing additional materials either agreed or ordered after the original substantial completion deadline. *See* May 7, 2021 Status Report (Doc. 550 at 8-9) (updating as to substantial completion of various productions). In addition, since the last status conference, Par substantially completed its production of documents from additional custodians related to Par marketing materials. To date, the Endo and Par Defendants have produced approximately 5.2 million documents, including over 209,000 documents in this matter specifically. In compliance with the Court's May 14, 2021 Order (Doc. 561 at 3), Endo will have substantially completed its further production from the custodial files of additional sales representatives and additional search terms related to "Report of Suspected Diversion" forms by the new deadline of June 21, 2021.

⁵ Walgreens has also updated its Interrogatory responses several times at Plaintiff's request.

1 In addition, Endo updated the Court in its May 28, 2021 Status Report (Doc. 566) regarding
2 its investigation into the availability of additional data and information in Endo's Commercial Data
3 Warehouse and certain other data sources responsive to Plaintiff's Interrogatory Nos. 1-4, including
4 with respect to certain temporal gaps in Endo's Materials Dropped Data File and missing field data
5 in Endo's Call Data File. As of the same date, Endo had produced 22 files of additional data
6 responsive to Interrogatories 1-4.

7 As previously explained, the Commercial Data Warehouse is a computer environment
8 consisting of storage locations where data from certain databases are stored. Since Endo's May 28,
9 2021 Status Report, the Endo team has continued to run SQL and other searches and to conduct data
10 analysis, and has located within the Commercial Data Warehouse for certain periods data containing
11 drop downs for "message description" and "message name" data associated with sales representative
12 calls, which is data Plaintiff has specifically asked Endo to search for. The Endo team is currently
13 working to confirm the presence of "message description" and "message name" data associated with
14 calls for additional time periods and to generate reports of such data. In addition, Endo has
15 identified some call data from the 2002 through 2007 period from production volumes made in an
16 unrelated non-opioid government investigation, and is working to try to prepare this data for
17 production. Endo is continuing to search for additional sources of pre-2008 data. On May 28, 2021,
18 Plaintiff also inquired about certain data in Endo's SpeakerNet Data File, which Endo is also
19 investigating.

20 Endo will continue to use its best efforts to complete its ongoing investigation into the
21 Commercial Data Warehouse and other data sources, but, given the complexity of that search and its
22 iterative nature, cannot currently confirm a completion date for that investigation. In the interim,
23 Endo will continue to keep Plaintiff apprised of its progress, including through weekly Zoom
24 conferences that Endo established and will continue. If the Court is inclined to set a deadline, as
25 Plaintiff requests, Endo respectfully requests that it set a deadline 30 days from now by which Endo
26 will further report to the Court on its status, with the expectation at that point that Endo will be in a
27 position either to report on whether its investigation is complete or identify a date certain by which it
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1 reasonably can do so. Such further status report on or around July 16 will be more than 2.5 months
2 before Plaintiff's expert reports are due and 4 months before the close of fact discovery.

3 Finally, on May 28, 2021—three days before the Court imposed deadline—the Endo and Par
4 Defendants served all supplemental interrogatory responses ordered by and in compliance with the
5 Court's May 14, 2021 Order, including substantial additional information. Separately, on the
6 evening of May 28, 2021 (the Friday of Memorial Day weekend), Plaintiff sent two letters
7 identifying additional issues about which it sought to meet and confer, requesting *inter alia* an
8 agreement to conduct additional searches and significant further information (set forth at Sections
9 II.B.1.a, c above)—within two business days (by June 2, 2021). As the Endo and Par Defendants
10 have reported to Plaintiff, they are preparing substantive responses, and expect to provide them
11 shortly.

12 **Allergan** has deemed produced in this case 724,488 documents and 5,145,819 pages
13 gathered and produced—without geographic limitation—in other opioid cases. It has also agreed to
14 provide its production in the MDL regarding suspicious order monitoring-related documents. In late
15 January and early February, Allergan agreed to conduct several additional searches for this case in
16 particular at Plaintiff's request. On February 26, 2021, Allergan produced an additional 47,984
17 documents, including 190,209 pages, which includes the results of several of those searches. On
18 March 13, 2021, Allergan made another substantial additional production. On March 24, 2021,
19 Allergan produced additional chargeback and rebate data as well as its privilege log. Allergan's
20 production is substantially complete.

21 The **Teva** Defendants have produced over 3.2 million documents available to Plaintiff, and
22 have completed the production of documents for the additional agreed regional custodians.

23 **B. Status of Other Third-Party Discovery**

24 The California Department of Justice ("DOJ") produced its CURES data on April 28.
25 Walgreens identified significant deficiencies in the CURES data, including millions of duplicative
26 records. On May 5, Walgreens requested that DOJ reproduce the data, correcting the issues. On
27 May 14, DOJ made a supplemental production correcting the issue.

1 In April 2020, Defendants served requests for production on Plaintiff for the production of
2 documents and data from all pertinent subdivisions of the City and County of San Francisco. When
3 the City and County was dismissed as a plaintiff, Plaintiff took the position that certain of its
4 subdivisions were not within Plaintiff's custody and control, requiring third-party subpoenas.
5 Defendants therefore served subpoenas on the San Francisco departments and entities that Plaintiff
6 has deemed outside of its custody and control, including the Department of the Environment,
7 Department of Emergency Management, Board of Supervisors, Controller's Office, Mayor's Office,
8 District Attorney's Office, Department of Human Resources, Health Service System, and Human
9 Services Agency.⁶ These subdivisions have responded to the subpoenas, and the parties are in the
10 process of meeting and conferring regarding those responses. The parties will submit disputes to the
11 Court as necessary.

12 Defendants are also pursuing third-party discovery from various state agencies, law
13 enforcement entities, and third-party pharmacies,⁷ and have subpoenaed the Medical Board of
14 California, the Dental Board of California, the California Board of Registered Nursing, and the
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23 ⁶ Defendants have also served subpoenas on the San Francisco Superior Court and the University
of California San Francisco Hospital.

24 ⁷ In Plaintiff's section of this status report, Plaintiff complains about Walgreens' subpoenas to
25 various third-party pharmacies and law enforcement agencies. It was Plaintiff who put Walgreens'
26 conduct outside of San Francisco at issue, and Walgreens is entitled to pursue the discovery it needs
27 to defend itself. It is unclear why Plaintiff is complaining about this discovery, as the subpoenas
28 were not served on Plaintiff. Furthermore, the fact that any of these agencies are parties in the MDL
cannot be used to deprive Walgreens of relevant discovery here. As to its San Francisco Sheriff's
Department subpoena, Walgreens immediately withdrew that subpoena once it realized its
inadvertent error.

1 United States Drug Enforcement Administration. Defendants have met and conferred with all four
2 of those agencies, and are negotiating the scope of their productions.

3 DATED: June 15, 2021

Respectfully submitted,

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DATED: June 15, 2021

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ATTESTATION

I, Aelish M. Baig, am the ECF User whose ID and password are being used to file this Joint Status Update. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that Defendants have concurred in this filing.

DATED: June 15, 2021

s/ Aelish M. Baig
AELISH M. BAIG

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on June 15, 2021, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

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